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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 309(j) )  
of the Communications Act, )  
Competitive Bidding )

PP Docket No. 93-253

To: The Commission

**COMMENTS OF ARCH COMMUNICATIONS GROUP, INC.**

Arch Communications Group, Inc. ("Arch"), on behalf of its affiliated licensee companies<sup>1/</sup>, hereby submits its comments in response to the Notice of Proposed Rulemaking (the "Notice")<sup>2/</sup> in the above-captioned proceeding. The following is respectfully shown:

**I. Introduction**

1. Arch, through its affiliated companies, provides common carrier paging, private carrier paging ("PCP"), common carrier mobile and Specialized Mobile Radio ("SMR") services to

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<sup>1/</sup> The affiliates of Arch are Arch Capital District, Inc.; Arch Southeast Communications, Inc.; Arch Michigan, Inc.; Arch Connecticut Valley, Inc.; and Hudson Valley Mobile Telephone, Inc.

<sup>2/</sup> FCC 93-455, released October 12, 1993.

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the public.<sup>3/</sup> Arch is a publicly held company and enjoys a status as one of the fastest growing providers of mobile radio services in the country.<sup>4/</sup> The range of the Arch operations includes local systems, regional systems, and more recently, nationwide systems.<sup>5/</sup>

2. Arch has taken a serious interest in the development of PCS, and has been an active participant in the Commission's PCS proceeding.<sup>6/</sup> Also, Arch has regularly monitored the legislative activities affecting commercial mobile services and, thus, has a longstanding familiarity with the battle for "regulatory parity" that was waged on Capitol Hill. Based upon this background, Arch has an informed frame of reference from which to comment in this proceeding.

3. Arch has extensive licensing experience in connection with the establishment of complex wide-area messaging

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<sup>3/</sup> Arch's operations encompass thirteen states, including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Michigan, North Carolina, South Carolina, Florida, and Louisiana.

<sup>4/</sup> Arch currently serves in excess of 255,000 paging units.

<sup>5/</sup> Arch has responded to the growing number of its customers desiring wide-area and nationwide service by developing a national paging system utilizing private carrier channels, which may be combined into a nationwide system through the use of frequency scanning pagers. Currently, Arch has applications granted or pending for authority to construct PCP base station facilities at approximately 1,300 sites nationwide.

<sup>6/</sup> See Comments of Arch Communications Group, Inc., in Gen. Docket No. 90-314 and ET Docket No. 92-100, Amendment of the Commission's Rules to Establish New Personal Communications Service, filed November 9, 1992.



networks, and has established itself as serious, *bona fide* provider of mobile communications services to substantial segments of the public. The company also has acquired mobile licenses in private transactions that offer substantial insight into the manner in which the Commission's bidding procedures should be conducted in order to produce economically rational results. Consequently, Arch has a substantial basis in experience for informed comment in this proceeding.<sup>7/</sup>

## **II. General Principles to Apply in Auctioning Spectrum**

4. The Commission is to be commended for releasing the Notice in a very short time frame while still presenting in such a comprehensive fashion the many issues raised by the amendments to the Communications Act contained in the Budget Act<sup>8/</sup>. In responding to the seemingly endless array of issues, Arch first seeks to set forth the basic principles it believes should govern the competitive bidding process, taking into account the legislative mandate and public interest considerations.

### **A. Disruption to Existing Services Must Be Minimized to the Extent Possible**

5. Arch is operating in a business in which there is a constant requirement for licensing new sites and channels, and

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<sup>7/</sup> Arch is addressing in particular the manner in which the new auction procedures should be applied in connection with the licensing of narrowband PCS services, and existing public and common carrier radio paging services.

<sup>8/</sup> The Omnibus Budget Reconciliation Act of 1993.



where mutual exclusivities frequently arise.<sup>9/</sup> The auction legislation effectively suspends the continued processing of competing applications pending a determination of the manner in which auctions are going to be conducted. The potential for disruption is severe.

6. To some extent, this is unavoidable given the Congressional mandate to cease conducting lotteries to resolve mutual exclusivities between applications accepted for filing after July 26, 1993, without first determining that the applicable radio service is not subject to competitive bidding.<sup>10/</sup> There are, however, several actions the Commission can take to minimize the disruption. First, the Commission should accept the July 26, 1993 cut-off date specified in the legislation as a "bright line", and continue to process all applications accepted for filing in advance of that date according to pre-existing procedures. This not only will expedite the resolution of long-standing frequency conflicts but also will avoid the unfairness that often occurs with the retroactive application of new procedures.

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<sup>9/</sup> The Notice properly recognizes that Section 309(j) of the Communications Act, as amended in the Budget Act, by its terms, only permits auctions if mutual exclusivity exists among applications that have been accepted for filing. If mutual exclusivity among such applications does not exist, the license is not subject to competitive bidding. Arch urges the Commission not to revise long-standing licensing principles in order to create additional mutual exclusivities.

<sup>10/</sup> See Budget Act, Section 6002(c) (Special Rule).



7. Second, the Commission should protect and preserve licensing mechanisms that encourage and facilitate the voluntary resolution of mutual exclusivities.<sup>11/</sup> For example, the Public Mobile Service rules specifically provide that "Parties to contested proceedings are encouraged to settle their disputes among themselves"<sup>12/</sup>, and provide procedural relief from the major amendment rule for a frequency change that serves to resolve a frequency conflict.<sup>13/</sup> The disruption to existing services will be minimized if parties continue to be provided avenues under the rules for reaching private resolutions of their frequency conflicts.<sup>14/</sup>

8. Third, and most important, the Commission must not allow the focus of attention on new services like PCS to delay the adoption of final rules that will allow applicants in

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<sup>11/</sup> For example, the Private Radio Bureau has proposed a licensing scheme for wide area 800 MHz SMR licensing that would accord competing applicants for MTA licenses a 60 day period to resolve their competing requests on a consensual basis. See PR Docket No. 93-144, 8 FCC Rcd 3950 (1993). The Commission should not abandon approaches of this nature simply because it has the authority to auction of competing licenses.

<sup>12/</sup> 47 C.F.R. §§ 22.29(b).

<sup>13/</sup> 47 C.F.R. §§ 22.23(g)(2). Normally, an amendment changing the requested frequency would cause the application to be treated as newly filed, and subject to further competing proposals. This rule section creates an exception for frequency changes that resolve mutual exclusivities.

<sup>14/</sup> Of course, such resolutions may be subject to settlement caps which prevent parties from being paid amounts in excess of their reasonable and prudent expenses in exchange for dismissing a competing application. See, e.g., 47 C.F.R §§ 22.928.



services of long standing to prosecute applications, even competing applications, to a prompt conclusion. Thus, Arch applauds the Commission's announced intention to apply new auction rules "to certain specific services immediately, including...all common carrier services"<sup>15/</sup>, and urges the Commission not to be swayed from this worthy objective by the deadlines imposed by Congress for the commencement of PCS licensing.<sup>16/</sup>

**B. Auction Rules Should be Designed  
to Create Rational Assignments**

9. If the competitive bidding procedures are not properly crafted, the auctions will create anomalous results that will disrupt the operations of a fully competitive market. Poorly constructed rules could engender results that are more the product of luck or surprise than solid business planning. If the auction process is responsible for creating situations in which some overpay while others underpay for spectrum on which competing services are provided, a level competitive playing field will not exist, and robust competition cannot be assured.

10. Arch is a serious industry participants who has<sup>17/</sup> and will pay for the use of spectrum provided that the competitive bidding processes are rational and permit reasoned

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<sup>15/</sup> Notice, ¶ 20.

<sup>16/</sup> The Budget Act requires that PCS licensing commence by May 7, 1994. See Notice, ¶ 1.

<sup>17/</sup> Arch has acquired many licenses in private transactions under existing rules.



decisions to be made. Several overriding principles should govern the auction process in order for reason to prevail. First and foremost, blocks of spectrum that are substitutable and equivalent should be auctioned off simultaneously so that a market price range can settle across the entire "lot".<sup>18/</sup> Second, all applicants interested in bidding on a license of a particular type should be included in a common bidding pool for all available licenses of that kind in order to assure that each has an equal opportunity to succeed.<sup>19/</sup>

11. To implement these concepts in situations involving frequency lots in which there are multiple available frequency assignments and multiple bidders, the Commission should seriously consider implementing a system of simultaneous bidding in which the bidding lasts a sufficient period of time to allow participants to assess the overall bidding matrix in a meaningful fashioned and to make reasoned judgments.<sup>20/</sup>

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<sup>18/</sup> Arch would consider spectrum to be equivalent and substitutable if the same bandwidth in the same geographic area is available. Thus, for example, the 5 nationwide symmetrically paired 50 kHz narrowband PCS channels would be considered fungible.

<sup>19/</sup> For example, the Commission should avoid licensing rules that create situations in which one channel has a dozen competing auction applicants while another fungible channel has only two. The results will be more rational if, in this situation, all fourteen applicants are able to bid on both channels.

<sup>20/</sup> Simultaneous bidding could be conducted electronically, by facsimile or by oral outcry. Contrary to the suggestion in the Notice at paragraph 56, Arch does not think that the use of simultaneous ascending bid electronic auctions will necessarily take longer to implement, particularly if the  
(continued...)



**C. The Process Should Be Designed  
to Relieve Unnecessary Paperwork**

12. The Notice properly recognizes that the competitive bidding system "should be simple and easy to administer" and "minimize costs to applicants and the Commission."<sup>21/</sup> This goal will be advanced substantially if the Commission adopts procedures requiring a minimum of paperwork. Arch has several ideas that will help the Commission reduce unnecessary paperwork.

13. The Budget Act limits the use of lotteries to situations of mutual exclusivity. The Commission must not allow this prerequisite to foster licensing procedures mandating a single applicant to file a multitude of applications covering every spectrum block of conceivable interest. An example will provide a case in point. A party interested in a symmetrically paired (50 kHz inbound and outbound) nationwide narrowband PCS channel, if unsuccessful in the lottery, might also be interested in an asymmetrically paired (50kHz outbound and 12.5kHz inbound) nationwide channel, or an unpaired (50kHz) nationwide channel, or any of a number of combinations of MTA or BTA narrowband PCS licenses. If this applicant is required to file a separate application for each and every channel and geographic area within

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<sup>20/</sup> (...continued)

Commission utilizes experienced outside auction consultants to assist in conducting the auctions as contemplated at paragraph 167 of the Notice.

<sup>21/</sup> Notice, ¶ 18.



the scope of its legitimate licensing interest, the Commission will be inundated with filings.

14. To avoid opening the floodgates in this manner, the Commission must adopt a simple application form that enables an applicant to specify in a single consolidated filing all of the bandwidths and geographic areas in which the applicant wishes to be eligible to bid.

15. Arch also urges the Commission to avoid bidding mechanisms that call for elaborate payment and refund procedures. The more payments the Commission has to accept and return, the greater the procedural burden on both the applicants and the Commission and the greater the prospects for errors and delay. As is set forth in greater detail below, Arch has a proposed procedure for the narrowband PCS auctions that will assure that participants have the financial wherewithal to meet the bid requirements, with a minimum of paperwork.

16. Finally, Arch recommends that the Commission avoid "mixed" bidding procedures (e.g. a combination of oral bidding and sealed bidding) or elaborate "second round" bidding mechanisms (e.g. those in which a group of top bidders are given additional opportunities to submit "final and best" offers.) These mechanisms bring an element of complexity to the process that is inappropriate at this nascent stage of the Commission's experimentation with alternative bidding forms. The public interest is best served by straightforward procedures that



achieve the stated goal of speeding the delivery of new services to the public.<sup>22/</sup>

**D. Intermediate Links  
Should Be Subject to Auction**

17. The Commission tentatively concludes in the Notice that licenses used in services as an intermediate link in the provision of a continuous end-to-end service offering to a subscriber be subject to competitive bidding.<sup>23/</sup> As an example, the Commission cites a cellular carrier utilizing its own point-to-point microwave facilities to interconnect cell sites and the MTSO.<sup>24/</sup> Arch supports this proposal.

18. As mobile services proliferate, there will be more and more demand for linking facilities. And, the available spectrum to satisfy this demand is, to a certain extent, shrinking due to the reallocation of a portion of the microwave band to PCS services. As a consequence, the prospect of competing requests for frequencies to meet system control requirements will increase. The use of auctions provides a mechanism to ration this scarce spectrum among and between interested parties.

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<sup>22/</sup> The legislation is clear that public interest findings should not be based solely on the objective of increasing Federal Revenues. Notice, ¶ 14.

<sup>23/</sup> Notice, ¶ 28.

<sup>24/</sup> Id. at ¶ 29.



### III. The Narrowband PCS Auction Rules

19. When the Commission adopted the Narrowband PCS Order in July, it deferred establishing a detailed licensing mechanism, noting that "[i]ssues regarding licensee selection procedures and the regulatory status of the [narrowband] service are the subject of legislation actively being considered by the Congress."<sup>25/</sup> Presumably, the detailed licensing plan for narrowband PCS will be formulated in this competitive bidding proceeding. Arch has some concern, however, that inadequate attention has been paid to the many unique aspects of the narrowband allocation that require special attention in the auction process. Consequently, this section of these comments provides a detailed discussion of the major elements of the competitive bidding process with specific reference to the narrowband proceeding.

20. **Bidding Method.** Arch favors an open ascending bidding method for narrowband PCS.<sup>26/</sup> Because many of the available channels must be considered homogeneous<sup>27/</sup>, a bidding

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<sup>25/</sup> Narrowband PCS Order at ¶ 1.

<sup>26/</sup> The reasons in favor of open ascending bid auctions have been well articulated by the Commission in the course of reaching its tentative conclusions. Notice, ¶ 46.

<sup>27/</sup> Because the 901-902, 930-931 and 940-941 MHz bands are clear, and in reasonable proximity to one another, there would appear to be no substantial technical differences between channels of equal bandwidth in common geographic areas. Thus, for example, each of the 7 asymmetrically paired MTA channels would be largely indistinguishable in a common market area.



mechanism must be developed to permit simultaneous bidding for all licenses of like kind in a common area by the entire pool of interested applicants. Serious consideration should be given to utilizing an electronic bidding process in order to permit the simultaneous auctioning of multiple licenses to become automated to the maximum extent possible.<sup>28/</sup>

21. **Sequence of Bidding.** The Commission should commence by auctioning off all of the nationwide licenses, starting with the largest bandwidths (the symmetrically paired channels), moving onto the medium bandwidths (the asymmetrically paired channels) and ending with the narrowest bandwidths (the unpaired channels). Then the Commission should auction off the regional licenses, starting again with the largest bandwidths and moving to the smallest bandwidths.<sup>29/</sup> Ideally, the electronic bidding process would enable all MTAs to be auctioned simultaneously so that a party could increase its chances of

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<sup>28/</sup> The potential number of narrowband licenses that will be issued in view of the varying bandwidths, pairings and geographic areas specified in the Narrowband Order is 5594 (11 nationwide licenses plus 51 MTAs times 13 licenses in each, plus 492 BTAs times 10 licenses each). Automating the bidding process to permit the simultaneous bidding on multiple homogeneous licenses ultimately will expedite the process.

<sup>29/</sup> Regional license are allocated in the Narrowband Order on the basis of MTAs. However, some petitioners for reconsideration have asked the Commission to revisit this issue and consider substituting a handful of large regions for the 47 MTAs in order to conform the areas more closely to existing regional service areas of wide area paging systems. The licensing scheme proposed by Arch would work with larger regions as well.



garnering a common channel in multiple markets.<sup>30/</sup> Finally, the Commission would auction of the local licenses<sup>31/</sup>, again starting with the largest and moving to the smallest blocks.

22. Generally, Arch supports the conclusion that sealed combinatorial bidding not be an element of the narrowband licensing process.<sup>32/</sup> The fact that there are so many narrowband licenses of different bandwidths being allocated for use in diverse areas ranging from BTAs to nationwide reduces the likelihood that an applicant will be forced to aggregate channels or territories to meet its business plan. And, the aforementioned simultaneous bidding method will accommodate some aggregation efforts without resort to sealed combinatorial bids.

23. **Financial Matters.** Arch is in substantial agreement with the Commission on a number of the issues involving the financial aspects of the competitive bidding process. First, because there will likely be a large number of bidders for narrowband PCS licenses, it does not seem appropriate to set minimum bid requirements.<sup>33/</sup> Also, because narrowband PCS is expected to encompass a family of services, it is difficult if

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<sup>30/</sup> If simultaneous bidding of all regions is not contemplated, bidding should start with the largest MTA (by population) and continue through to the smallest MTA.

<sup>31/</sup> The Commission proposes that the local licenses be issued on a BTA basis. Some petitioners for reconsideration have requested that MTAs be the smallest geographic area licensed for narrowband PCS.

<sup>32/</sup> Notice at ¶ 120.

<sup>33/</sup> Accord Notice, ¶ 67.



not impossible to set a reasonable minimum bid requirement. Second, Arch generally supports the idea that the Commission should utilize a combination of upfront payments, bid deposits and lump sum payments to assure that the bidding is limited to serious financially capable participants.<sup>34/</sup> However, as is discussed in greater detail below, the specifics of the payment process need to be carefully considered in order to avoid complicating the process too much in the context of the narrowband service where literally thousands of auctions will be conducted. Third, Arch supports prompt lump sum payments for narrowband PCS channels, with the proviso that entities qualifying for preferences, including small businesses, should be accorded the benefit of being allowed to make installment payments.<sup>35/</sup>

24. Arch endorses the Commission's proposal that narrowband bidders be subject to an upfront payment equal to 2 cents per megahertz per population in the service territory.<sup>36/</sup> But, the mechanics of the upfront payment should be altered. Those whose short form application have been accepted for filing<sup>37/</sup> should be required to show up at the auction with a

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<sup>34/</sup> Accord Notice, ¶ 102.

<sup>35/</sup> Accord Notice, ¶ 68.

<sup>36/</sup> See Notice, ¶ 103.

<sup>37/</sup> The Joint Commenters do not support the use of letter perfect application standards. Too often, these requirements can be traps for the unwary and the adverse consequences of even clerical errors can be severe. Also,  
(continued...)



cashier's check drawn on a qualified institution in an amount sufficient to cover the upfront payment. The winner of the auction would tender the upfront payment for immediate deposit.<sup>38/</sup>

25. The Commission proposes to require a prompt deposit of 20% of the winning bid from the successful applicant, and seeks comment on when this deposit should be due.<sup>39/</sup> Arch is sympathetic to the concern expressed by the Commission that immediately collecting an additional payment of uncertain size presents procedural problems. Providing a reasonable period of time for the winner to pay the 20% deposit makes sense.<sup>40/</sup> So, Arch proposes that the difference between the upfront payment and

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<sup>37/</sup> (...continued)

the Commission should strive to have as many qualified bidders as possible participate in the auctions in order to foster an economically efficient assignment of spectrum. Consequently, those who have their short form applications dismissed as an initial matter due to a letter perfect defect should have a very brief period (perhaps 10 days) to resubmit a corrected application.

<sup>38/</sup> Accepting the upfront payment only from auction winners will streamline the process, and avoid the costs and delays associated with processing refunds. Also, applicants will be spared the carrying costs associated with the submission of upfront payments with their short form applications that could be held by the Government indefinitely while thousands of auctions are organized and conducted. This procedure also spares the Commission the burden of establishing and managing interest bearing accounts which otherwise, in fairness, would seem appropriate.

<sup>39/</sup> Notice, ¶ 105.

<sup>40/</sup> A three step payment procedure (upfront money, winner's deposit, and lump sum balance) is not considered necessary by Arch.



the winning bid be paid within 5 business days after the auction is conducted.<sup>41/</sup>

26. **Safeguards.** The Notice discusses several possible safeguards that the Commission has under consideration to assure that only *bona fide* applicants participate in and win lotteries. As a general rule, Arch believes that the auction process itself, coupled with the construction requirements contained in the narrowband rules<sup>42/</sup>, will suffice to weed out speculators. Further safeguards are not required.

27. Detailed long form applications should not be filed by every narrowband PCS applicant. It smacks of "busy work" to require all auction participants to prepare and file FCC Form 401 applications<sup>43/</sup>, particularly when the Commission specifically indicates that it intends to actually review the long form application of only the auction winner. While creating procedural obstacles of this nature may have been wise when random selection criteria were utilized, they are no longer

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<sup>41/</sup> Arch has experienced unexpected delays in the transfer of funds by banks despite diligent efforts to avoid them. The five business day payment schedule is designed to allow for contingencies and thus avoid the litigation that will certainly ensue if a shorter time period is missed due to a bank error.

<sup>42/</sup> See Narrowband Order, ¶¶ 36 -37 (establishing minimum construction requirements for nationwide, MTA and BTA licensees.) Failure to meet the construction deadlines results in the so-called "death penalty" (ie. the complete forfeiture of the license).

<sup>43/</sup> For the sake of this discussion, Arch is assuming that narrowband PCS will be classified as a Commercial Mobile Service, making the common carrier FCC Form 401 the appropriate application form.



appropriate now that winners will be paying for the spectrum they receive.<sup>44/</sup>

28. Arch also strenuously opposes the imposition of any restrictions on the free alienation of narrowband PCS licenses. In the context of a new developing service, it is critical for marketplace forces to be allowed to operate after the auctions to fine tune (or radically alter) the initial results in response to changing market conditions.<sup>45/</sup> Only by making narrowband PCS licenses freely transferable can the Commission be sure that this dynamic correction process will work.<sup>46/</sup>

29. The Commission must be cautious as well not to adopt overly broad anti-collusion rules that might chill legitimate business transactions. The wide-area paging business is characterized by a broad array of cooperative agreements by which licensees exchange traffic between their respective systems in adjoining territories in order to accord subscribers a greater range of service. The desire of an increasing segment of the

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<sup>44/</sup> This is especially true given the number of narrowband PCS licenses that are being made available and the number of potentially interested parties. The Commission would truly be opening the floodgates if every applicant was required to submit complete FCC Forms 401 for the minimum number of sites necessary to meet narrowband construction requirements.

<sup>45/</sup> Accord Notice, ¶ 84.

<sup>46/</sup> Arch agrees with the Commission that there is no likelihood of "unjust enrichment" in circumstances where an auction winner has paid the highest bid price for spectrum in an open bidding context. Notice, ¶ 83.



population for nationwide paging services also has fostered joint ventures between regional carriers to permit them to compete more effectively on a nationwide level. Arch envisions that similar arrangements will be necessary and appropriate in some instances to foster the prompt and full development of narrowband PCS systems. The Commission must not adopt anti-collusion rules that prohibit or inhibit applicants from discussing *bona fide* transactions of this nature. A broad ban on "sharing information" with other potential bidders would go too far.<sup>47/</sup>

30. Arch recommends instead that the Commission only ban collaborative behavior that would violate the antitrust laws or Federal bid rigging statutes. This will serve to prohibit territorial divisions of markets, and conspiratorial behavior designed to reduce bid totals, without outlawing legitimate discourse among and between potential bidders.<sup>48/</sup>

31. One safeguard Arch would retain is a post-auction petition to deny process.<sup>49/</sup> The Commission does not have the

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<sup>47/</sup> Arguably, perfect information among and between potential bidders regarding the value each places on particular licenses will result in an optimal assignment of spectrum.

<sup>48/</sup> For example, a carrier who principally serves the Western U.S. and a carrier who principally serves the Eastern U.S. may have a legitimate interest in discussing a joint venture to establish a nationwide PCS system. Meaningful discussions can only occur if they are able to discuss the amounts they would be willing to pay for such a license and their financial ability to pay their pro-rata share.

<sup>49/</sup> Section 309(j) appears to require the Commission to entertain petitions to deny to the extent that auctioned spectrum fails under existing petition procedures. See Notice, ¶ 110.



personnel resources to thoroughly screen all auction winners, and should rely upon disappointed bidders to alert the agency of material and substantial questions which affect the basic licensee qualifications of the winner. Placing limits on settlement payments would suffice as an effective deterrent to strike petitions<sup>50/</sup>, and thus should mitigate the Commission's concern that auction losers will "gang up" on winners.

**IV. Preferences For Designated Entities are  
Appropriate In the Narrowband PCS Services.**

32. New subsection 4(D) of Section 309(j) of the Communications Act directs the Commission to adopt licensing procedures to ensure that small business, rural telephone companies, and businesses owned by women and minorities (collectively, "Designated Entities") are given "the opportunity to participate" in the provision of spectrum-based services. In the case of narrowband PCS, the Commission has achieved this worthy objective in part by adopting an allocation plan calling for the issuance of a large number of licenses in a variety of bandwidths and geographic areas, thereby creating a wealth of licensing opportunities. Nevertheless, further preferences in the form of set asides or preferred payment options are required to fulfill the statutory mandate.

33. The formula the Commission proposes for upfront payments could require a business to deposit as much as

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<sup>50/</sup> See, e.g., 47 C. F. R. §§ 22.927.



\$1,500,000 to be eligible to participate fully in the narrowband PCS lotteries.<sup>51/</sup> The purchase price of the spectrum is certain to be many times that amount. Then, the winner must invest large amounts of capital to meet stringent construction requirements. The total financial undertaking is substantial, and could serve to preclude the participation of small businesses. The Congress has directed the Commission to avoid this result.

34. The financial challenge faced by small businesses is exacerbated by the fact that PCS is a developing technology, which means that equipment is not immediately available. Small businesses can ill afford to invest substantial sums of money to acquire licenses and then sit around while the technology catches up with the licensing process. Having to make substantial lump sum payments before equipment is commercially available -- on other than a sole source basis -- so that the winner can generate an income stream, is a substantial hardship.

35. In Arch's view, it would be fair under these circumstances to accord small businesses<sup>52/</sup> special concessions in the form of tax certificates and/or installment payment options. The legislative objective of creating meaningful licensing opportunities for small business can best be met in

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<sup>51/</sup> An applicant can hold up to three paired 50 kHz channels nationwide for a total of 300 kHz. Application of the \$.02 per megahertz per population formula results in an upfront payment of approximately \$1.5 million.

<sup>52/</sup> Arch supports the use of preexisting SBA definitions to define small businesses. These will allow parties to reply upon long-established guidelines in determining which entities qualify.



this fashion. Otherwise, there is a risk that all licenses will go only to those with the deepest of pockets.

**CONCLUSION**

The foregoing premises having been duly considered, Arch respectfully requests that the Commission adopt rules governing competitive bidding that are consistent with the foregoing comments.

Respectfully Submitted,

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November 10, 1993